

The Honorable John C. Coughenour  
The Honorable Marsha Pechman  
The Honorable James L. Robart  
Noted for Hearing: September 7, 2007  
Without Oral Argument

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LUIS TORRES, Individually and on behalf of )  
all others similarly situated, )

Plaintiff, )

vs. )

MICROSOFT CORPORATION, a Washington )  
Corporation, )

Defendant. )

STEVE CARLIE, Individually and On Behalf )  
of All Others Similarly Situated, )

Plaintiff, )

vs. )

MICROSOFT CORPORATION, a Washington )  
Corporation, )

Defendant. )

No. 07-CV-1121 JCC

Hon. John C. Coughenour

**DECLARATION OF DARREN T.  
KAPLAN IN SUPPORT OF  
DESIGNATION OF CHITWOOD  
HARLEY HARNES LLP AS INTERIM  
COUNSEL FOR THE PUTATIVE  
CLASS PURSUANT TO FED.R.CIV.P.  
23(g)(2)(A)**

No. 07-CV-1132 CMP

Hon. Marsha J. Pechman

[Caption continues on next page.]

1 CHRISTINE MOSKOWITZ and DAVID )  
2 WOOD, Individually and on behalf of all others )  
3 similarly situated, )  
4 Plaintiffs, )  
5 vs. )  
6 MICROSOFT CORPORATION, a Washington )  
7 Corporation, )  
8 Defendant. )

No. 07-CV-1270

Hon. John C. Coughenour

8 HEIDI LING, As Parent And Natural Guardian )  
9 Of ROBERT LING, III, Individually and on )  
10 behalf of all others similarly situated, )  
11 Plaintiff, )  
12 vs. )  
13 MICROSOFT CORPORATION, a Washington )  
14 Corporation, )  
15 Defendant. )

No. 07-CV-1271

Hon. James L. Robart

DARREN T. KAPLAN hereby declares as follows:

1. I am an attorney admitted to practice in the states of Connecticut, New York and Georgia and am seeking admission pro hac vice in this case. I am a partner in the law firm of Chitwood Harley Harnes LLP ("Chitwood") in Atlanta, Georgia and am the managing attorney at Chitwood for this litigation.

2. I submit this Declaration in support of the motion by Plaintiffs in the above-captioned actions to appoint the firms of Stritmatter Kessler Whelan Coluccio, Chitwood Harley Harnes, LLP, The Hodkin Kopelowitz Ostrow Firm, P.A., Kabateck Brown Kellner LLP, Keller Rohrback LLP, Krause Kalfayan Benink and Slavens, LLP, and Wasserman Comden & Casselman, LLC as interim counsel to act on behalf of the putative class pursuant to Fed.R.Civ.P. 23(g)(2)(A).

Darren T. Kaplan  
Chitwood Harley Harnes LLP  
2300 Promenade II  
1230 Peachtree Street, N.E.  
Atlanta, Georgia 30309  
Tel: (404) 873-3900

1           3.       Chitwood has done significant work in identifying and investigating potential  
2 claims in this action. We have conducted months of factual research into the problem of  
3 Microsoft Corporation's ("Microsoft") Xbox 360 gaming consoles (the "Xbox 360") and  
4 specifically the fact that the Xbox 360 has and had a continuing problem with scratching and  
5 ruining game disks and other optical media loaded into the Xbox 360's included DVD-drive.  
6 We have performed extensive legal research in determining what causes of action these  
7 underlying facts will support as well as whether or not a class can be certified in this matter. We  
8 have expended significant time responding to inquiries from members of the putative class and  
9 interviewing prospective representative plaintiffs.  
10

11           4.       To date, attorneys and support staff at Chitwood have expended over 130 hours in  
12 this matter.  
13

14           5.       Chitwood is one of the leading plaintiff's class action law firms in the United  
15 States with a nationwide litigation practice. A copy of Chitwood's firm resume is annexed  
16 hereto as Exhibit "A", but I wish to highlight some of the more significant achievements in my  
17 firm's long history of handling class action litigation.  
18

19           6.       Chitwood served as co-lead counsel in both the BankAmerica securities litigation  
20 in the Eastern District of Missouri, which resulted in a \$490 million recovery for investors, and  
21 the Oxford Health Plans securities litigation in the Southern District of New York, which  
22 resulted in a \$300 million recovery. At the time these cases were resolved, they were the second  
23 and fifth largest recoveries, respectively, since the enactment of the PSLRA.  
24

25           7.       Moreover, Chitwood has the experience and resources to prosecute this case  
26 through trial, if necessary. Unlike many firms that prosecute class actions, attorneys at Chitwood  
27 have successfully completed a number of bench and jury trials of complex cases. Last year,

28                               Darren T. Kaplan  
Chitwood Harley Harnes LLP  
2300 Promenade II  
1230 Peachtree Street, N.E.  
Atlanta, Georgia 30309  
Tel: (404) 873-3900

1 Gregory Keller, one of the attorneys at the firm who will be actively involved in this case, acted  
2 as lead trial counsel in a case involving the valuation of a large publicly traded company, which  
3 involved a number of complex accounting issues.  
4

5 8. Finally, attorneys at Chitwood devote a significant portion of their practice to the  
6 representation of plaintiffs in consumer class actions against companies in the personal and  
7 information technology areas. We have successfully prosecuted actions against the world's  
8 largest software company, the world's largest internet search providers, and one of the world's  
9 largest printer manufacturers. Chitwood served as co-lead counsel in the Epson Ink Cartridge  
10 Cases in the California Superior Court, obtaining a settlement for the class that the court valued  
11 in excess of \$350 million. Chitwood served as co-lead counsel in the Yahoo! Inc. click-fraud  
12 litigation, achieving a settlement for the class that included a 100% refund for all fraudulent  
13 clicks.  
14

15 9. Most recently, Chitwood was co-counsel in litigation against Microsoft in this  
16 very court arising from a different problem with the Xbox 360 gaming console. Industry  
17 analysts are practically unanimous in their view that this litigation was the principal factor in  
18 Microsoft's surprise decision in December 2006 to extend the warranty on Xbox 360s from  
19 ninety days to a full year.  
20

21 10. Chitwood currently has seventeen attorneys, three contract attorneys, and five  
22 paralegals on staff. The firm routinely incurs out-of-pocket expenses in excess of \$500,000 in  
23 preparing cases for trial. All of these resources will be committed as needed to the  
24 representation of the putative class in this litigation.  
25

26 I declare under penalty of perjury under the laws of the United States of America that the  
27 foregoing is true and correct.  
28

1 August 16, 2007

2 s/ Darren T. Kaplan  
3 Darren T. Kaplan

---